REMARKS

The Applicant respectfully requests reconsideration in view of the following remarks and amendments. Claims 1, 3, 13, 21, 22, 28 and 30 are amended. Claims 34-39 are new. Support for claims 34-39 is found, for example, in paragraphs [0017]-[0019] and [0025] of the Specification. Accordingly, claims 1-39 are pending in the application.

I.   Summary of Examiner's Interview

The Applicant conducted a telephonic interview with the Examiner, Richard Pantoliano Jr., on September 13, 2007. Present at this interview for the Applicant were Jonathan Miller and Triet Nguyen. The Applicant submits the following statement of the substance of the interview to comply with MPEP § 713.04. The participants discussed the proposed amendments of the claims (submitted in the agenda sent to the Examiner) and an agreement was reached. In particular, the Examiner suggested an amendment that recited elements of *storing and maintaining the status in the shared memory*. The Examiner expressed that the amendment was not taught in the cited art. Accordingly, the participants then agreed to amend the independent claims per the Examiner's suggestion to overcome the cited art.

II.   In the Specification

The Examiner noted the usage of the trademark JAVA in the Specification. As listed in the aforementioned section (starting on page 2 of this paper), the Applicant amended the Specification to capitalize instances of the trademark JAVA to denote its trademark status. In addition, the Applicant believes, in the instant application, that the generic terminology is not necessary to be the included along with each instance of JAVA recited in the Specification because the term JAVA is used to explicitly refer to the JAVA platform or a component within the JAVA platform (e.g., "JAVA processes").

III.   Claims Rejected Under 35 U.S.C. § 101

Claims 1, 2, 4, 6-12, 21, 23, 25, 26, 28, and 29 stand rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter.

In regard to claim 1, the Examiner asserted on page 3 of the Office Action that the claims are interpreted as being "software *per se*" as the basis for supporting the rejection. The

Applicant respectfully submits that the claims being "interpreted as software *per* se" is not an appropriate basis for the § 101 rejection of the claims. MPEP § 2106.01, instead, describes that claims directed to *data structures* and *computer program listings* are considered non-statutory "descriptive material *per se*." For example, In Re Warmerdam, 31 USPQ2d 1754 (1994) (which the Examiner cited on page 2 of the Office Action) held that claims directed to a data structure for "locating the medial axis of the object," and "creating a hierarchy of bubbles on the medial axis," were non-statutory because the claims solely involved manipulations of abstract ideas (i.e., a mathematical algorithm). See Warmerdam at 1759 and 1760. Claim 1, in contrast, is directed to a system and not directed to a data structure nor a computer program listing.

In particular, claim 1 recites the following elements:

a cluster having a first instance and a second instance, each of the first and second instances including a plurality of server nodes;

a control logic to start each instance by initiating a launch logic for each of the server nodes, the launch logic, when initiated, to execute Java processes in each respective server node; and

a communication interface coupled between the launch logic and the control logic to enable the launch logic to obtain status of each of the Java processes and enable the control logic to access the status in a shared memory via the communication interface, the launch logic to store and maintain the status in the shared memory via the communication interface.

Initially, it must be determined whether the claims fall under at least one of the four statutory subject matter categories for § 101. See MPEP § 2106(IV)(B). As shown above, the Applicant respectfully submits that claim 1 is directed to a system, which clearly falls within the four statutory subject matter categories (i.e., a machine, manufacture) for § 101. Further, none of the elements recited in claim 1 can be reasonably interpreted as being a data structure *per se* or a computer program listing *per se* as described in MPEP § 2106.01. For example, the claim recites elements of "a plurality of server nodes," and "a shared memory," which structures in a hardware system as disclosed in paragraphs [0017] and [0018] of the Specification. Therefore, it can be discerned that the hardware system enables the functionality of system as claimed in claim 1.

In addition, the Applicant respectfully submits that claim 1 provides a practical application that produces a useful, tangible, and concrete result. In determining whether the claim is for a practical application, the focus is on whether *the final result* achieved by the claim is *useful, tangible, and concrete*. See MPEP § 2106. For example, claim 1 recites the elements of "a control logic to start each instance by initiating a launch logic for each of the server nodes,

the launch logic, when initiated, to execute Java processes in each respective server node." Starting up the server nodes can be considered a practical application related to controlling server nodes for managing their execution of processes. As a result, elements of claim 1 are directed to producing a useful, tangible, and concrete result of controlling server nodes within a cluster.

Independent claims 21 and 28 recite analogous limitations to those in claim 1 and provide a practical application that produces a useful, tangible, and concrete result of controlling server nodes and processes within a cluster as well.

In light of at least the previous reasons, the Applicant respectfully submits that base claims 1, 21, and 28, along with their dependent claims, are directed to statutory subject matter. Accordingly, reconsideration and withdrawal of the rejection of claims 1, 2, 4, 6-12, 21, 23, 25, 26, 28, and 29 are respectfully requested.

IV.   Claims Rejected Under 35 U.S.C. § 102

Claims 1-3, 6, 7, 9, 10, 13, 14, 16, 17, 19-23, 25, 26, and 28-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2005/0005200 issued to Matena et al. (hereinafter "Matena"). To establish an anticipation rejection the Examiner must show that the cited reference teaches each element of a claim.

Claim 1, as amended, recites the elements of "the control logic to access the status *in a shared memory* via the communication interface, the launch logic *to store and maintain* the status *in the shared memory* via the communication interface" (emphasis added). The amendment is supported, for example, by paragraphs [0018] and [0019] of the Specification. The Examiner acknowledged during the September 13, 2007 interview that Matena fails to teach these elements. In addition, the Applicant presents the following arguments to show that the claim is patentable over Matena. For example, as shown in Fig. 9, Matena teaches that the state model (which includes information about processes) is included within the execution controller and *not shared with other application controllers*. See Matena, paragraphs [0099], [0121] and Fig. 9. Further, as shown in Fig. 10 and Fig. 24, Matena teaches that each application controller (e.g., service and java application controllers) includes a version of the state model that is *separate from the state model within the execution controller*. See Matena, paragraphs [0141], [0208]. Consequently, it should be understood that the execution controller and application

controllers are using separate state models, instead using "a shared memory," as required by the claim. In addition, although Matena discloses that nodes may communicate with each other using a shared memory, the type of communication enabled by the shared memory is not disclosed, let alone, storing and maintaining the "status of each of the Java processes," as recited in the claim. See Matena, paragraph [0413]. As a result, for at least these reasons, Matena fails to teach the elements of "the control logic to access the status in a shared memory via the communication interface, the launch logic to store and maintain the status in the shared memory via the communication interface," as recited in claim 1. Thus, in view of the foregoing reasons, Matena fails to teach each element of claim 1. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 1.

In regard to dependent claims 2, 3, 6, 7, 9, and 10, these claims depend from base claim 1 and incorporate the limitations thereof. Therefore, for at least the reasons discussed in connection with claim 1, Matena fails to teach each element of claims 2, 3, 6, 7, 9, and 10 because of their dependencies on claim 1. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 2, 3, 6, 7, 9, and 10.

In regard to independent claims 13, 17, 21, and 28, these claims, as amended, recite analogous limitations to those recited in claim 1. Therefore, for at least the reasons discussed in connection with claim 1, these claims, along with their dependent claims, are not anticipated by Matena. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 13, 14, 16, 17, 19-23, 25, 26, and 28-33.

V.   Claims Rejected Under 35 U.S.C. § 103

Claims 4, 5, 8, 11, 12, 15, 18, 24, and 27 stand rejected under 35 U.S.C. § 103(a) as being obvious over Matena in view of U.S. Patent No. 6,823,358 issued to Spender (hereinafter "Spender"). To establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the references when combined must teach or suggest all of the claim limitations. See MPEP § 2142.

As an initial matter, as mentioned previously, the Examiner acknowledged during the September 13, 2007 interview that the claims, as amended, are patentable over the cited art. The Applicant also presents the following arguments to illustrate that the cited art fails to teach or suggest each element of the claims.

In regard to dependent claims 4, 5, 8, 11, 12, these claims depend from base claim 1 and incorporate the limitations thereof. Therefore, for at least the reasons discussed in connection with claim 1, Matena fails to teach or suggest each element of claims 4, 5, 8, 11, and 12. In addition, Spender fails to cure these deficiencies. The Examiner has not cited and the Applicant is unable to discern the portion of Spender that teach or suggest the missing elements. As a result, Matena in view of Spender fails to teach or suggest each element of claims 4, 5, 8, 11, and 12. Accordingly, reconsideration and withdrawal of the rejection of claims 4, 5, 8, 11, and 12 are respectfully requested.

In regard to claims 15 and 18, these claims depend from base claims 13 and 17 and incorporate the limitations thereof. Therefore, for at least the reasons discussed in connection with claims 13 and 17, Matena fails to teach or suggest each element of claims 15 and 18. In addition, Spender fails to cure these deficiencies. The Examiner has not cited and the Applicant is unable to discern the portion of Spender that teach or suggest the missing elements. As a result, Matena in view of Spender fails to teach or suggest each element of claims 15 and 18. Accordingly, reconsideration and withdrawal of the rejection of claims 15 and 18 are respectfully requested.

In regard to claims 24 and 27, these claims depend from base claim 21 and incorporates the limitations thereof. Therefore, for at least the reasons discussed in connection with claims 21, Matena fails to teach or suggest each element of claims 24 and 27. In addition, Spender fails to cure these deficiencies. The Examiner has not cited and the Applicant is unable to discern the portion of Spender that teach or suggest the missing elements. As a result, Matena in view of Spender fails to teach or suggest each element of claims 24 and 27. Accordingly, reconsideration and withdrawal of the rejection of claims 24 and 27 are respectfully requested.

VI. New Claims 34-39

The Applicant added new dependent claims 34-39 to the application. As previously mentioned, support for claims 34-39 is found, for example, in paragraphs [0017]-[0019] and [0025] of the Specification. These claims are patentable over the cited art because each of these claims depends on an allowable base claim. In addition, the Applicant submits that the elements recited in claims 34-39 are not taught or suggested in the cited art. Therefore, for at least these reasons, the Applicant respectfully submits that claims 34-39 are in condition for allowance and such action is earnestly solicited at the Examiner's earliest convenience.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

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Dated: September 14, 2007 _____/Jonathan S. Miller/_____

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Melissa Stead   __9-14__, 2007